

No. 98-2543

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Submitted: August 6, 1999

Filed: August 13, 1999

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Before BEAM, LOKEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

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PER CURIAM.

Three Missouri Department of Corrections (DOC) prison officials appeal from the district court's order denying their motions for summary judgment based on qualified immunity on three counts of this 42 U.S.C. § 1983 action brought by inmate Jerry McCrary-El.

We agree with the district court that Mr. McCrary (as he refers to himself in his brief) alleged in his complaint conduct that violated his clearly established constitutional rights of which a reasonable prison official would have known. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) (test for qualified immunity).

With regard to Mr. McCrary's failure-to-protect claim (Count I), we conclude that genuine issues of material fact exist concerning the knowledge of the defendants and whether their conduct was objectively reasonable in light of their knowledge at the time of the incident. See Lyles v. City of Barling, No. 98-2788, 1999 WL 428017, at \*2 (8th Cir. June 28, 1999) (scope of interlocutory appeal from denial of qualified immunity).

As to Mr. McCrary's retaliation claims (Counts V and VI), we also conclude that a material fact question was created as to whether Mr. Delo's conduct was objectively reasonable in light of his knowledge. We note, however, that Mr. Lombardi

and Mr. Moore were not specifically named in those counts, Mr. McCrary has not pointed to evidence in the record that would connect these two supervisory defendants with Counts V and VI, and the district court did not address their liability on those counts. See Otey v. Marshall, 121 F.3d 1150, 1154-56 (8th Cir. 1997). We therefore reverse the district court's denial of qualified immunity to Mr. Lombardi and Mr. Moore on Counts V and VI, and we affirm the district court's order in all other respects. See 8th Cir. R. 47B.

We also deny Mr. McCrary's motion to dismiss the appeal.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.